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PATENTDocket No.: 4605-001**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of

JOHN BLUMENTHAL et al.

U.S. Application No. 10/647,895

Filed: August 26, 2003

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Confirmation No.: 3576

Group Art Unit: 3617

Examiner: Stephen P. Avila

For: METHOD OF AND APPARATUS FOR AERATING BODIES OF WATER

PETITION UNDER 1.182MailStop POBA
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sirs:

CERTIFICATION OF FACSIMILE TRANSMISSION
I HEREBY CERTIFY THAT THIS PAPER IS BEING FACSIMI-
LE TRANSMITTED TO THE PATENT AND TRADEMARK OFFICE
ON THE DATE SHOWN BELOWDonna L. Lizama
TYPE OR PRINT NAME OF PERSON SIGNING CERTIFICATIONDonna L. Lizama 2-24-06
SIGNATURE DATE
571-273-8300
FACSIMILE NUMBER

Appellants hereby petition to have the February 3, 2006 Notification of Non-Compliant Appeal Brief rescinded.

The Notification of Non-Compliant Appeal Brief states the Appeal Brief filed December 13, 2005 is defective because the Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the Appeal. The Notification specifically states each independent claim has not been specifically explained because the Summary includes limitations not contained in the sole independent claim 15. The Notification states the Summary of the claimed subject matter must be limited to what is in independent claim 15.

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The Notification states the Summary of the Claimed Subject Matter is defective because it indicates the propelled water craft is in the form of a catamaran, and that each cylindrical sheath 68 is connected by a flexible connection to catamaran, which flexible connection is provided by chains 60-62. The Notification also states inclusion of propellers 74 and 76 in the Summary of the Claimed Subject Matter makes the Summary defective. The Notification also states the Summary is defective because it indicates water is sucked in while the catamaran is moving, and the forward motion of the catamaran has a synergistic effect on aeration of the body of water because the forward motion induces greater bubbling and aeration, and enables a relatively large body of water to be purified.

The position of the Examiner that the Summary must be limited to what is in independent claim 15 is without foundation. There is nothing in 37 C.F.R. 41.37(c)(1)(v) requiring the Summary to be limited to what is only in each independent claim. The Rule merely states the Brief must contain a concise explanation of the subject matter defined in each independent claim. There is nothing in the Rule stating the only thing that can be in the Summary of the Claimed Subject Matter can be what is in each independent claim.

A Summary of the Claimed Subject Matter having more in it than the claimed subject matter of the independent claim is beneficial to the Board because such a Summary provides the Board with a better understanding of what the specific structure is. Further, by setting forth advantages of the claimed subject matter in the Summary, the Board is apprised, during its initial consideration of the Brief, of what advantages Appellants' structure has. Clearly, the Board is able to determine by reading the claims and arguments what Appellants regard as their invention.

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Based on the foregoing, rescission of the Notification of Non-Compliant Appeal Brief is in order, and the Examiner should be instructed to respond in an appropriate manner to Appellants' Brief.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time and Petition fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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